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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,600	11/13/2003	Alan Reid	MMED-002AUS	9005
22494	7590	05/27/2008	EXAMINER	
DALY, CROWLEY, MOFFORD & DURKEE, LLP SUITE 301A 354A TURNPIKE STREET CANTON, MA 02021-2714				MACNEILL, ELIZABETH
3767		ART UNIT		PAPER NUMBER
NOTIFICATION DATE		DELIVERY MODE		
05/27/2008		ELECTRONIC		

## Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@dc-m.com  
amk@dc-m.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/712,600	REID, ALAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	ELIZABETH R. MACNEILL	3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 April 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-23 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 12-14 is/are allowed.  
 6) Claim(s) 1-11 and 15-23 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-4, 7-11, 15, and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Lehmann (US 7,211,069).

Lehmann teaches a medical device with a use (Fig 4C) and a nonuse (Fig 4B) position comprising:

A housing (7) having first (25) and second (8) portions. The first end of the first portion is the top of sleeve (25), an inwardly extending flange; the second end of the first housing portion is the bottom of the sleeve. The first end of the second housing portion is top telescoping member 24/top piece 11; the second end of the second housing portion is bottom piece 12. See Fig 4A.

A longitudinal member (26) having first (top, inwardly extending flange) and second (bottom outwardly extending flange), extending from the first housing portion along the axis (central up-down axis, axis of the needle) in the use position and

moveable (sliding movement) along the axis (Fig 4C-4B) until captured (by the inwardly extending flange of the first end of the first housing portion)

A Needle (2) extending downwardly (depending on the orientation of the syringe/needle hub) in the use position and not extending (enclosed by) the housing in the non-use position.

Claims 2-4, 7, 15: Fig 4A-4C

Claims 8-10: the flanges of the longitudinal member and first housing portion are considered locking members because they stop movement of the longitudinal member

Claim 11: needle retaining member 19.

Claim 16: the joints of the second portion are first and second wings that receive pressure from a user to straighten the second portion and push the longitudinal portion upwards.

2. Claims 5, 6, and 17-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Sasso (US 2002/0111581).

Sasso teaches a housing (20) having first (28) and second (30 and 26) portions having first (attached to 26) and second (free) ends, the second housing portion having a first position (Fig 1) in the use position and a second (Fig 3) position in the non-use position, the first housing portion extending along an axis (length-wise axis, Fig 1); a longitudinal member (38) having first (pointed) and second (base of the "V" shape) ends, the longitudinal member extending from the housing along the axis in the use position (Fig 1) and being captured by the first housing portion (indent 42, see also Fig 4) in the non-

use position; and a needle (22) extending downwardly (Fig 1) from the housing in the use position and being captured (Fig 2) by the housing in the non-use position.

As to claim 18 first and second wing portions (the two faces of projection handle)

As to claim 20,22 locking members 44 and 46 on the longitudinal member and locking members 50 and 52 on the first housing portion.

***Allowable Subject Matter***

3. Claims 12-14 are allowed.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-4, 7-11, 15, and 16 have been considered but are moot in view of the new ground(s) of rejection.

5. Applicant's arguments with respect to claims 5, 6, and 17-23 have been considered but are not persuasive. As to claim 5, second housing portion 26 and 30 are pivotally coupled at joint 32. Fig 2. As to the flat/captured limitations, see Fig 2, showing the second portion transitioning from flat to closed. Claims 17-23 lists the same limitations as claim 5 only in method form requiring "providing" and "connecting" steps which do not add substantive limitations which have not been addressed in the detailed rejection of the device claims. Again, the applicant has not defined a direction of "the axis" of the first housing portion and every three-dimensional object has three axes which the examiner may reasonably consider to be "the axis" of the object.

***Conclusion***

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH R. MACNEILL whose telephone number is (571)272-9970. The examiner can normally be reached on 9:00-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth R MacNeill/  
Examiner, Art Unit 3767  
/Kevin C. Sirmons/  
Supervisory Patent Examiner, Art Unit 3767